IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4869 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATBHAI KANJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4869 of 2002

MR MEHUL SHARAD SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1,3

MR MG NAGARKAR for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 05/12/2002

ORAL JUDGEMENT

1. Rule. Mr.A.D.Oza, learned GP, waives service of notice of rule for respondents No.1 and 3 and Mr.Nagarkar waives service of notice of rule on behalf of respondent

No.2. With the consent of all the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner is the custodian of one Amol Sitadel Coop. Housing Society, which is also known as "Pallavi Apartments". It is the case of the petitioner that in the "Pallavi Apartments", in all there are three towers; one high-rise tower of 9 storey, second high-rise tower of 7 storey, and the third low-rise of 4 storey. On account of the earth-quake on 26-1-2001, large number of buildings in the State, including in Ahmedabad had collapsed and were also damaged. The State Government passed the resolution of giving reliefs on 23-2-2001 to the buildings situated in the State and those buildings are divided into three categories namely; G2, G3 and G4. There is no dispute on the point that the buildings in which the inspection was carried out by the Expert Committee, which are the subject mater of this petition, are falling under G3 category. The inspection report dated 9-3-2001 is produced on record of G3 category and the damage assessed is 40% to 50%. It is the case of the petitioner that on the basis of this certificate issued by the corporation on the basis of the expert opinion, the unit which is comprising of three separate towers in the society of the petitioner, was treated as one and damage assessed on the basis of the certificate of 40% to 50% for one tower only at the rate of Rs.1,72,000/=. The petitioner is also paid the said amount. It is the case of the petitioner that in all, on account of the fact that there are three separate towers, the petitioner had to spend huge amount of Rs.16,00,000/= for the repaire of the said buildings. The case of the petitioner is that the petitioner would also be entitled to the relief at the rate of 40% to 50% in respect of left out one high rise tower and one low rise tower, because the relief paid is only for one high rise tower, treating the unit of the petitioner as one.

3. The contention raised on behalf of the State Government is that the Expert Body has issued certificate on the basis of which the compensation is paid. The reliance is also placed by Mr.Oza as well as by Mr.Nagarkar upon the approved plan of the Corporation and they have raised contentions that since there was only one approved plan of the constructed buildings, the petitioner society is treated as one unit and accordingly compensation has been paid. It has also been submited on behalf of the State Government by Mr.Oza that as per the judgement of the Division Bench of this Court, in respect of any non-payment of compensation of relief or otherwise

regarding the earth quake effected persons, the proper remedy would be to approach before the concerned learned District Judge/Chairman of Lokpal and Mr.Oza has fairly submitted that if it is ultimately ordered by the learned District Judge, the government will disburse the payment on the receipt of the report or the order or the order.

4. In view of the above, the first question, in my view, requires to be decided is that what will be the effect of the approved plan while paying the relief to the earth quake victims and whether the petitioner would be entitled to the relief as there are three independent towers, if it is ultimately found by Lokpal that there are three separate towers. In my view, so far as the relief to the earth quake victims are concerned, the approved plan may be one of the considerations, but the same can not be the sole consideration. The Government has paid relief to the earth quake vitctims on the basis of the resolution in large number of cases without insisting for production of approved construction plans. In my view, since these are the decisions of the State Government with a view to provide relief, what is required to be verified is whether the buildings were there in existance or not, irrespective of its approval by the Corporation. It may be that the plans might not have been approved or it may be that without approval of the plan the construction of the buildings might be there, but since the State Government, by way of relief, has come out to provide help to the citizens, in my view it will hardly be fair on the part of the State Government to insist that the victims should come with the approved plan, by ignoring the actual position of the buildings prior to the earth quake. In my view, if the buildings were in existance prior to the earth quake and they have collapsed or they have suffered damage on account of the earth quake, the concerned persons or citizens would be entitled to have the benefit of relief extended by the State Government, irrespective of the construction plans were approved or not. I am inclined to intrepret the scheme in view of peculiar circumstances of earth-quake relief to earth-quake affected persons.

5. So far as the opinion of the Expert Body is concerned, it is true that the Expert Body has opined, but the assessment of damage is on the basis of percentage and, therefore, merely because one certificate is issued, it cannot be said that it will be only for one unit, even though in the very society there may be more than one unit. As a matter of fact, if there is more than one unit, the relief is required to be extended in proportion to the existance of member of such buildings.

6. However, so far as the existance of the buildings is concerned, this Court while exercising power under 226 of the Constitution of India, cannot undertake the exercise of actual verification of the existance of the tower and more particularly in view of the decision of the Division Bench of this Court reported in 2001(2) GLH, 623, I am of the view that so far as the actual verifications of the tower in existance are concerned, it is more better if the matter is left to the learned City Civil Judge, Ahmedabad and the report of the learned City Civil Judge, Ahmedabad for the actual verifications of the existance of the tower should be treated as final.

7. In ivew of the above discussion, I am of the view that the following directions would meet with the ends of jusitce:

7.1) The learned City Civil Judge, Ahmedabad together with the other members associated with the Committee may verify the actual existance of one high rise tower of 9 storey, one high rise of 7 storey and one low rise of 4 storey of the petitioner society and such exercise be completed within a period of two months from the date of receipt of the order of this Court. It will be open to the learned City Civil Judge to delegate this work to any other Judge or officer of City Civil Court.

7.2) After the actual verification is made of the site, the learned City Civil Judge shall calculate the amount of relief required to be paid to the petitioner on the basis of the certificate vide No.016138 issued by the Development Officer, Ahmedabad Municipal Corporation. After the amount is calculated, he shall pass the final order, directing the concerned officers of the State Government to make the payment of the balance amount.

7.3) It is made clear that while taking decision and while calculating the amount of relief, the learned City Civil Judge shall take into consideration the observations made by this Court in this judgement.

7.4) Respondents No.1 and 3 shall disburse the amount within a period of two months to the petitioner society if required as per the order of the learned City Civil Judge, Ahmedabad.

8. The petition is disposed of in terms of the aforesaid directions. Rule is made absolute accordingly. No costs.

5-12-2002 (Jayant Patel, J.)

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